

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEITH L. NASH,

Plaintiff,

v.

DOUG WADDINGTON, *et al.*,

Defendants.

Case No. C06-5127-RJB/KLS

ORDER DENYING  
DEFENDANTS' MOTION TO  
STRIKE PLAINTIFF'S  
RESPONSE

Presently before the Court is Defendants' motion to strike Plaintiff's response to Defendants' motion for summary judgment. (Dkt. # 177). Defendants moved to strike Plaintiff's response (Dkt. # 178) on the grounds that it was untimely filed and the service copy did not contain all attachments which are referred to in the response. (Dkt. 177, p. 2-3). On December 4, 2007, this Court ordered Plaintiff to provide the Court with proof that he served Defendants with copies of the exhibits referred to in his response. (Dkt. # 183). On January 4, 2008, Plaintiff filed a response and a request that the Court accept his response. Having carefully reviewed Plaintiff's response, request, and the balance of the record, the Court finds that Defendants' motion to strike should be denied.

At the outset, the Court notes that it accepts Plaintiff's response to the order to show cause as timely. Plaintiff has diligently kept the Court advised of his whereabouts since his release from prison and there was some delay when mail was returned and Plaintiff was not aware that an Order to Show

1 Cause was issued.<sup>1</sup>

2 Plaintiff advises the Court that he properly served Defendants with the exhibits referred to in his  
3 response. (Dkt. # 186, p. 1; # 187, p. 1). After filing his response to the summary judgment motion,  
4 Plaintiff was released from prison on November 10, 2007. (Dkt. # 186, Exh. 1, Attach. C).  
5 However, Plaintiff's legal property boxes, including receipts of legal mail postage transfers, are still  
6 located at the Airway Heights Corrections Center. (*Id.*, Attach. A). Plaintiff also states that defense  
7 counsel has failed to acknowledge to him whether she has received copies of his exhibits so he cannot  
8 confirm to the Court that they were received. (*Id.*, p. 3, Exh. 1, p. 3; Dkt. # 187, pp. 3-4). On January 10,  
9 2008, the Court received Defendants' reply, acknowledging that defense counsel received Plaintiff's  
10 exhibits on October 17, 2007. (Dkt. # 188, Exh. 1).

11 ACCORDINGLY, it is **ORDERED**:

- 12 (1) Plaintiff's request to accept timely response to Order to Show Cause (Dkt. # 187) is  
13 **GRANTED**;
- 14 (2) Defendants' Motion to Strike Plaintiff's Response (and Exhibits) (Dkt. # 178) is **DENIED**;  
15 and
- 16 (3) The Clerk shall send copies of this Order to Plaintiff and counsel for Defendants.

17  
18 DATED this 14th day of January, 2008.

19  
20  
21   
22 Karen L. Strombom  
23 United States Magistrate Judge  
24

---

25  
26 <sup>1</sup>Following his release, Plaintiff notified the Court of his change of circumstances and requested an  
27 extension of the joint status reporting deadline. (Dkt. # 182). The Court's Order to Show Cause (Dkt. # 183)  
28 was returned to the address provided by Plaintiff as undeliverable. (Dkt. # 184). Plaintiff notified the Court  
Clerk by telephone that his address had changed on December 17, 2007. A copy of the Order to Show Cause  
was resent to Plaintiff on the same day. (*See notation at* Dkt. # 184). On December 26, 2007, Plaintiff  
provided a formal change of address. (Dkt. # 185).